

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

RANDI L. SMITH-GORDEY
Claimant

VS.

LONG MOTOR CORPORATION
Respondent

AND

HARTFORD INS. CO. OF THE MIDWEST
TWIN CITY FIRE INSURANCE CO.
SENTINEL INSURANCE CO.
Insurance Carriers

Docket Nos. **1,037,754;**
1,039,814 &
1,040,418

ORDER

Claimant requested review of the October 25, 2011 Award by Special Administrative Law Judge Jerry Shelor. The Board heard oral argument on February 7, 2012.

APPEARANCES

Michael R. Lawless of Lenexa, Kansas, appeared for the claimant. Anemarie D. Mura of Overland Park, Kansas, appeared for respondent and its insurance carriers.

RECORD AND STIPULATIONS

The Board has considered the record and adopted the stipulations listed in the Award.

ISSUES

Initially, the claimant alleged a work-related injury to her right upper extremity from a discrete trauma on April 23, 2007, followed by an injury to her left upper extremity due to overuse while recovering from treatment for the right upper extremity (Docket No. 1,037,754).¹ The medical opinions regarding the cause for claimant's right upper extremity complaints included suggestions that the condition was due to repetitive trauma and not

¹ Application for Hearing filed December 4, 2007.

just the discrete trauma. Claimant then alleged a work-related injury to her right upper extremity including the shoulder from a series of work-related repetitive traumas from February 23, 2007 through August 14, 2007, (Docket No. 1,039,814).² After her first right carpal tunnel surgery, claimant returned to work but again experienced an onset of symptoms in her right upper extremity. Claimant then alleged she suffered a discrete trauma on May 23, 2008, to her right upper extremity (Docket No. 1,040,418).³

The claims were consolidated for hearing and claimant alleged that in addition to her upper extremity injuries she also suffered a permanent psychological impairment. The respondent stipulated that claimant had suffered accidental work-related injuries on the date or dates alleged but disputed whether claimant suffered any permanent impairment other than to her right upper extremity.

The Special Administrative Law Judge (SALJ) determined that the accidents and injuries alleged in both claims filed after the original claim were a natural and probable consequence of the initial injury. The SALJ determined claimant had suffered an 18 percent permanent partial disability to her right forearm. The SALJ further determined claimant had not met her burden of proof to establish she suffered a permanent psychological impairment.

Claimant requests review and argues that she is entitled to compensation for a K.S.A. 44-510e whole person impairment either based upon her medical expert's rating or based upon the fact that she suffered a psychological impairment. Claimant further argues the SALJ erred in failing to order respondent to pay for certain medical treatment. Conversely, respondent argues the ALJ's Award should be affirmed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record filed herein, the stipulations of the parties, and having considered the parties' briefs and oral arguments, the Board makes the following findings of fact and conclusions of law:

Claimant began working for respondent through a temporary agency in December 2006. On February 17, 2007, respondent hired claimant as a regular full-time employee. Her job was to scan the parts and then stack them back into a tub on the line. Claimant was injured on April 23, 2007, when a co-worker had separated some tubs which caused

² Application for Hearing filed April 22, 2008.

³ Application for Hearing filed May 30, 2008.

some tubs to fall over hitting the claimant. She also tried to stop the tubs from falling to the floor with her right arm and that's how she injured her right arm. She advised respondent the same day regarding her accident. Medical treatment was provided at Concentra which initially included physical therapy for approximately six weeks.

Dr. John Moore performed a physical examination and ordered an EMG. The July 6, 2007 EMG revealed median nerve damage and mild right carpal tunnel syndrome. Claimant received a steroid injection but had an allergic reaction. The doctor placed her on one-handed duty restrictions and respondent placed her in the receiving department to accommodate her restrictions. While claimant was working with one hand she began to have problems with her left hand and Dr. Moore provided claimant with a wrist splint for her left wrist.

On August 17, 2007, Dr. Moore performed a surgical open right carpal tunnel release on claimant's right hand at Olathe Medical Center. On April 29, 2008, Dr. Moore rated claimant's right upper extremity at the wrist level at 10 percent. Claimant was released to full-duty work with no restrictions.

On May 22, 2008, claimant returned to work. She used both of her hands in order to perform her job duties in the receiving department. Claimant testified she did not lift anything greater than 15 pounds that day and that she was repetitively gripping the different parts to retrieve them out of a box and put labels on the parts. Her right index finger, little finger and arm began shaking towards the end of the day.

On May 23, 2008, after working about three hours, claimant developed problems with her right upper extremity shaking and uncontrollably flopping. Claimant sought treatment at the Shawnee Mission Medical Center emergency room and her right arm was placed in a splint to keep it from shaking or flopping.

Dr. William Reed Jr., an orthopedic surgeon, examined and evaluated claimant on June 3, 2008, at respondent's insurance carrier's request. Claimant had complaints of pain in her right elbow and left wrist. Upon physical examination, Dr. Reed was not able to find a specific diagnosis so he ordered an EMG. The June 18, 2008 EMG revealed evidence of recurrent carpal tunnel syndrome of the right hand as well as Guyon's Canal Syndrome. There was no evidence of cubital tunnel syndrome in the right arm. Claimant returned for a follow-up visit on June 24, 2008, at which time claimant's left arm was asymptomatic.

On July 30, 2008, Dr. Reed performed an open carpal tunnel release, an extensive synovectomy involving all flexor tendons of the right wrist and a microscopic fascicular release of the median and ulnar nerve. At a September 9, 2008 office visit, claimant's right arm was doing well but her left arm symptoms over the median and ulnar nerve were

worsening. So the doctor recommended a repeat EMG study of the left arm. The repeat EMG was performed on October 10, 2008. Dr. Reed testified:

Q. What was the result of that EMG?

A. A diagnosis was consistent with a successful median nerve release on the right arm, a mild C-6 radiculopathy having its origin in the neck and the right arm. Specific comment was made that that was chronic. There were no comments regarding the left arm. Although testing of the left was done, they made no comments of abnormalities in the left arm at all.⁴

Dr. Reed opined that claimant had reached maximum medical improvement on October 9, 2008. Based on the *AMA Guides*⁵, Dr. Reed provided claimant with an 18 percent permanent partial disability rating at the forearm level. The doctor authorized claimant to return to work without restrictions.

Claimant returned to work but complained of pain and was placed in the call center where she continued to work at the time of the regular hearing. And she received a promotion in August 2010.

As claimant continued working she had continued pain complaints including cervical complaints and she was seen by her personal physician who referred her to other physicians who ordered MRI studies of her cervical spine and brain. But claimant did not request that respondent provide additional treatment for her ongoing pain complaints.

Dr. Edward Prostic, board certified orthopedic surgeon, examined and evaluated claimant on January 25, 2010, at her attorney's request. The doctor took a history of claimant's complaints and also reviewed her medical records. Upon physical examination, Dr. Prostic found claimant had a significant decrease of her grip which was greater on the right than on the left as well as decreased two-point sensory discrimination on the right. The doctor opined that the two-point discrimination is due to the loss of sensation in the index and long fingers from carpal tunnel symptoms and surgery. X-rays were taken of claimant's cervical spine which revealed disk space narrowing at C5-6. Dr. Prostic placed permanent restrictions on claimant that she avoid duties that require right-handed repetitious or forceful gripping.

⁴ Reed Depo. at 6.

⁵ American Medical Ass'n, *Guides to the Evaluation of Permanent Impairment* (4th ed.). All references are based upon the fourth edition of the *AMA Guides* unless otherwise noted.

Dr. Prostic noted that claimant's complaints were out of proportion to his objective findings upon examination which might be explained by an unusual presentation of complex regional pain syndrome or by psychological issues. Based upon the *AMA Guides*, Dr. Prostic found a 15 percent permanent functional impairment to the body as a whole. But Dr. Prostic testified:

Q. Doctor, you've rated Ms. Gordey at 15 percent to the body as a whole. What body parts did you take into consideration in giving that rating?

A. Her upper extremity.

Q. And you did testify that the injury was not to the neck, correct?

A. Correct.⁶

Dr. Prostic further opined that claimant's problems were contributed to by her work each and every workday through the time that he had examined claimant. But Dr. Prostic testified that claimant's traumatic injury on April 23, 2007, could suddenly bring about the symptoms of carpal tunnel.

Dr. Allan Schmidt, a clinical psychologist, evaluated claimant on March 30, 2010, at claimant's attorney's request. The doctor reviewed claimant's medical records and took a history as well. Claimant was diagnosed in 1991 for panic or anxiety attacks and she indicated that she was having approximately 10 of these per month before her accidental injury and then after, the attacks became daily.

Q. And did you determine what her current functioning was?

A. I did.

Q. And what was that?

A. I had her identify any changes that have occurred to her as a result of her injury and she identified these 11 items that are listed here. These include the reduced ability to care for her personal hygiene. She avoids driving due to pain. She has diminished hand strength and mobility. She reports chronic and severe disruption of sleep due to pain. She reports reduced sexual desire and activity. Reduced participation in recreational activities. Reduced communication with friends and family. Difficulty consistently performing simple tasks. Reduced ability to work at

⁶ Prostic Depo. at 22.

an acceptable pace. Difficulty setting personal goals and difficulty adapting to change.

In general when I spoke with her she felt discouraged about her future. She denied any suicidal thoughts. She was generally cooperative with the process of evaluation. She complained repeatedly of pain in her hands, elbows, and shoulders, and was eager to show me where she was experiencing pain. She was talkative. She provided a great deal of information. She easily got off topic and had to be redirected.⁷

Dr. Schmidt had claimant complete the Beck Depression Inventory (DBI) which measures the symptoms of depression. Claimant tested moderately depressed. So the doctor had claimant complete the Millon Clinical Multiaxial Inventory (MCMI) third version which provides information regarding claimant's personality and clinical inventory as well as any psychological issues. The results of the MCMI showed claimant was dealing with both anxiety and a major depression, consistent between the two tests.

Claimant received a third test called the Brief Behavioral Health Inventory (BBHI), second edition, which uses the medical population instead of a psychological or non-psychological population. When compared to other people, claimant tends to overreport the extent and severity of her problems. Dr. Schmidt opined that claimant sees herself as being extremely disabled as well as having high levels of depression and anxiety but she is not malingering. Dr. Schmidt found claimant had major depressive disorder, panic disorder and pain disorder associated with her psychological factors and medical condition.

Dr. Schmidt diagnosed claimant with preexisting psychological problems which combined with her injury, physical symptoms and limitations to be the predominant factors in the aggravation of her preexisting psychological condition. Therefore, claimant has become increasingly depressed and anxious. The doctor recommended that she have a psychiatric consultation to review her medication and also participate in counseling. Dr. Schmidt testified that claimant's need for psychiatric consultation and counseling is the direct result of her work-related physical injury which aggravated her preexisting psychological conditions.

Based on the *AMA Guides*, Dr. Schmidt rated claimant's total psychological disability at 25 percent and of that 10 percent was preexisting with the remaining 15 percent a result of her accidental injury. Dr. Schmidt also used the *AMA Guides*, second edition, in order to arrive at a percentage.

⁷ Schmidt Depo. at 11-12.

Dr. Patrick Caffrey, a licensed psychologist, interviewed claimant on May 12, 2010, at the request of respondent's insurance carrier. Dr. Caffrey took a history from claimant and also reviewed her medical records. Claimant was given a number of psychological tests and Dr. Caffrey opined that she is suffering from major depression, and anxiety, panic and somatoform disorders.

Dr. Caffrey opined that claimant may have suffered an increase in her psychological symptoms as a consequence of her physical work-related injury in April 2007 but that by the time he saw claimant she had returned to her pre-injury baseline psychological condition.

Dr. Caffrey found claimant to be at maximum medical improvement and he did not place any psychological restrictions on claimant. The doctor determined that claimant had not suffered any permanent partial disability regarding her psychological complaints. Dr. Caffrey explained:

Q. And what brought you to that conclusion? What factors?

A. One of the main factors relates to functional status and one of these ideas about certain kinds of disorders and that kind of thing, often you have to tie them or relate to them to functional status. In other words, does the person have symptoms of depression and you might say yes. But the next part is: Does it rise to such a level that it interferes with her ability to function in the major spheres of life. And by that I mean major spheres, work, school, community, family, social, that kind of thing. So if you examine Randi Smith-Gordey's functional status, she really much to her credit is doing pretty well. As you know, she's returned to work and her employer in the Call Center seems to be doing just fine. She's been able to preserve her earnings in that regard. She seems to be able to have rewarding relationships with her family and she doesn't seem to have impairment there. She can drive a car and move around in the community. She can manage independently her activities of daily living and even in the more updated report from Dr. Ibarra, he talks about maybe even since I saw her, by the way maybe about a year ago, she's had improvement in that regard too. So kind of tying those diagnostic impressions to functional status leads me to believe that she's functioning pretty well.⁸

On July 20, 2010, the ALJ ordered an independent medical examination by Dr. Guillermo Ibarra, a board certified psychiatrist, to determine claimant's functional impairment related to her accidental injury. The doctor performed a physical examination on August 20, 2010, and diagnosed claimant with depression, panic disorder, chronic pain

⁸ Caffrey Depo. at 26-27.

and physical limitations due to chronic pain as well as family and occupational stressors. Dr. Ibarra opined that claimant is capable of understanding and carrying out simple and complex tasks as well as no evidence of impairment of her ability to sustain attention and concentration for extended periods attributable to a mental impairment. Claimant is able to adapt emotionally to changes and to tolerate normal pressures of competitive employment. She is able to complete a work week without special supervision or considerations and she is aware of normal hazards. The doctor further opined that claimant does not have a cognition impairment. At the time of Dr. Ibarra's evaluation, claimant was working full-time and she was able to live unsupervised as well as be a provider for her family's needs. Ultimately, Dr. Ibarra concluded claimant did not suffer any cognitive or mental impairment.

Initially, claimant argues that she has met her burden of proof to establish that she suffered a whole person permanent impairment and should be compensated pursuant to K.S.A. 44-510e(a). Claimant argues that Dr. Prostic provided a rating of 15 percent to the whole person.

The Board is mindful that Dr. Reed's office notes referenced possible reflex sympathetic dystrophy but that condition was never diagnosed nor rated by any of the physicians testifying as part of the evidentiary record. And as previously noted, Dr. Prostic did provide a 15 percent whole person rating but when questioned regarding his rating, Dr. Prostic agreed it was for the upper extremity. And his restrictions were for the right hand. Although Dr. Prostic speculated about complex regional pain syndrome he neither diagnosed nor rated that condition. Again, his rating was based solely upon the upper extremity which is a K.S.A. 44-510d scheduled disability. Consequently, all the doctors who provided ratings for claimant's physical injuries in these claims based their ratings upon a scheduled disability to the right upper extremity pursuant to K.S.A. 44-510d. The SALJ adopted Dr. Reed's 18 percent rating at the forearm level. The Board agrees and affirms.

The claimant further argues that she is entitled to compensation for a psychological impairment. It was undisputed that claimant had preexisting psychological conditions for which she had received some treatment as well as medications. Dr. Schmidt concluded the accidental injury on April 23, 2007, resulted in a permanent 15 percent impairment. Dr. Caffrey concluded the accident may have caused a temporary aggravation of her preexisting condition but that she returned to her preexisting baseline condition without any permanent impairment. Dr. Ibarra concluded claimant did not suffer any permanent mental or cognitive impairment from the accident.

During the course of litigation on these claims claimant never requested psychiatric treatment. Dr. Schmidt reported claimant had reduced ability to carry out her activities of

daily living and yet the evidence establishes that she continued to function and in the workplace even received a promotion. The evidence corroborates Drs. Ibarra and Caffrey's opinions that claimant does not suffer any permanent impairment as she continues to carry out daily living activities. The Board finds the opinions of Drs. Caffrey and Ibarra more persuasive in this instance and concludes claimant has failed to meet her burden of proof that she suffers any permanent psychological impairment as a result of her work-related accidental injuries.

Finally, claimant argues that the SALJ erred in failing to order respondent to pay the medical expenses identified in exhibits 1, 2 and 3 offered at the Regular Hearing Testimony by Deposition of Randi L. Smith-Gordey on May 4, 2011. Respondent objected and argued that there were no medical records to support claimant's contention that the medical expenses were for authorized medical treatment. The Board agrees. Moreover, the dates the treatments appear to have occurred were after claimant had been released from treatment by the authorized physicians.

But the Board further notes that although claimant did not establish that she suffered a permanent psychological impairment, nonetheless, Dr. Caffrey agreed she suffered a temporary increase in symptoms from her work-related accident. And claimant testified that led to an increase in the dosage of the medication she was already taking for her psychological condition. Claimant further identified that medication which is one of the medications identified in Exhibit 2. Consequently, respondent would be responsible to reimburse claimant for that medication expense upon presentation of itemized billings. But because Dr. Caffrey concluded claimant had returned to her baseline psychological condition when he saw her on May 12, 2010, any medications for claimant's psychological condition after that date would not be respondent's responsibility.

The SALJ specifically awarded claimant unauthorized medical up to the statutory maximum and further determined that claimant was entitled to future medical subject to hearing pursuant to K.S.A. 44-510k. The Board agrees and affirms.

As required by the Workers Compensation Act, all five members of the Board have considered the evidence and issues presented in this appeal.⁹ Accordingly, the findings and conclusions set forth above reflect the majority's decision and the signatures below attest that this decision is that of the majority.

⁹ K.S.A. 2010 Supp. 44-555c(k).

RANDI SMITH-GORDEY

**DOCKET NOS. 1,037,754;
1,039,814 & 1,040,418**

AWARD

WHEREFORE, it is the decision of the Board that the Award of Special Administrative Law Judge Jerry Shelor dated October 25, 2011, is affirmed.

IT IS SO ORDERED.

Dated this 30th day of March, 2012.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Michael R. Lawless, Attorney for Claimant
Anemarie D. Mura, Attorney for Respondent and its Insurance Carrier
Marcia Yates, Administrative Law Judge
Jerry Shelor, Special Administrative Law Judge